

EXHIBIT 2
continued

Catherine Magone

A. Well, semantics.

Q. What do you mean?

A. Because the palliative care service, even though I was appointing her with the palliative care, that would not mean that Carole would not be involved with palliative care. Her patients needed palliative care; she would be expected to be a part of the palliative care program.

Q. Is that contained anywhere in Plaintiff's Exhibit 2 for identification?

A. I don't know what you mean.

Q. You just testified that Carole would be expected if any of her patients were part of this program to be part of the -- to participate in that. Is that contained anywhere in Plaintiff's Exhibit 2?

A. No.

MR. KEIL: She is referring to the document in front of you.

A. Right. No.

Q. You met with her in your office; you told her to come over, is that right?

A. Correct.

Catherine Magone

Q. Was it right away that she came over after you called her?

A. I believe so.

Q. And who spoke first?

A. I did.

Q. What in words or substance did you say?

MR. KEIL: I'm going to object. This is all -- you've already asked this question.

MS. NICAJ: I'm permitted to ask it again, and I am just warning you you are violating the federal rules by making a speaking objection. So you can make, state your objection but that's it. Go ahead.

Q. What in words or substance did you say?

A. I told her that I was assigning Nicole Serra to be the person that would be appointed to the palliative care service and would be traveling to Ohio with Roseanne O'Hare and Maura Del Bene. I told her I made this decision based on input from Maura Del Bene and

Catherine Magone

Roseanne and that I felt that Carole would be busy with her disaster mental health training and that Nicole being young in her career would need to have something that I think that she would call her own.

Q. What do you mean, young in her career? What do you mean by that?

A. She is a relatively new social worker. She has only been working for four years, and she showed a lot of interest in the palliative care program.

Q. Wasn't Ms. Newmark also relatively new in the social work career as you put it?

A. Twice as long.

MS. NICAJ: Plaintiff's Exhibit 3.

(Plaintiff's Exhibit 3 5-page Resume of Nicole Serra marked for identification, as of this date.)

Q. When you say twice as long, what do you mean by twice as long in her career?

A. I believe that Nicole had four years' experience.

Q. What about her counseling

Catherine Magone

done.

A. I don't remember.

Q. Hold on. I'm asking what do you recall asking her.

A. I don't remember.

Q. In response to what you advised Ms. Newmark about assigning Ms. Serra to the palliative care service, what, if anything, did she say?

A. She was very angry.

Q. What did she say?

A. I'm very disappointed.

Q. Anything else?

A. Just visibly angry and disappointed.

Q. When you say visibly angry, what was her expression?

A. Anger.

Q. How did that manifest itself?

A. Huffing and puffing.

Q. Huffing and puffing?

A. Mm-hmm.

Q. Can you demonstrate that for us?

A. (Indicating) visibly angry. Carole

Catherine Magone

was a very angry woman.

Q. Apart from this communication with Ms. Newmark, did you ever -- concerning Ms. Newmark, did you ever document her anger?

A. No.

Q. When you say she was a very angry woman, what do you mean by that?

A. Well, part of the reason why I chose not to appoint Carole to the position of the palliative care was her input from Maura Del Bene who stated to me that she is a very angry woman, and her demeanor would not lend itself to taking care of dying patients.

Q. Did Ms. Del Bene ever express any similar concerns about Ms. Serra?

A. No.

Q. Did you ever see any E-mails concerning Ms. Serra's demeanor that Maura Del Bene submitted?

A. No.

Q. Did you ever ask her?

A. If she felt that Maura -- that Nicole had a negative angry demeanor?

Q. Did you ever ask her about Nicole's

Catherine Magone

performance?

A. Yes.

Q. In words or substance what did she say?

A. You are talking about Maura Del Bene?

Q. Yes.

A. Oh, she highly recommended Nicole to be the person that would be in the palliative care program for a number of reasons. Okay. Nicole sought her out, always willing to learn, takes copious notes whenever you are teaching her anything. Made it a point of corroborate -- collaborating with Maura on cases that involved palliative care, showed an interest in palliative care, unlike Carole who Maura told me had made -- Maura had made many attempts to meet with Carole to talk about palliative care. She apparently had set up weekly meetings which Carole did not show up. I believe she only showed up twice.

Q. Out of how many weekly meetings?

A. I don't know. I don't know.

Q. Do you know whether she failed to

Catherine Magone

show up at one?

A. No. Ten.

Q. She failed to show up at ten?

A. Eight. I'm guessing the number.

Q. Don't guess.

A. Okay. I don't know. I don't know.

I don't -- I don't know but it was --

Q. Did you ask her how many meetings did Ms. Newmark fail to attend after having those scheduled meetings?

A. I don't remember what she told me. She probably -- she might have given me a number, but I don't remember what it was.

Q. I don't want you to guess.

A. Okay. She also told me that despite attempts to get Carole involved in policy writing and procedure writing related to palliative care, specifically for a bereavement policy, she didn't do anything.

Q. Did you ever see that in writing anywhere, that Ms. DeI Bene attempted to get Ms. Newmark involved in writing as you put it?

A. Did I see anything in writing? No.

Q. Did you ever ask her for any

Catherine Magone

documents, incidents wherein she requested from Ms. Newmark her participating in this writing process?

MR. KEIL: Could you read the question back, please.

(Record read.)

A. No.

Q. Who supervised Ms. Serra?

A. Diane Lantz.

Q. You indicated that Ms. Newmark's position was what?

A. Senior social worker.

Q. Was she, in fact, Ms. Serra's direct supervisor?

A. She was the lead social worker with some --

Q. Was she her direct supervisor?

A. Not on paper.

Q. When you say not on paper?

A. Not part of her job description.

Q. What was her job description?

A. She was senior social worker.

Q. Was her position as senior social worker reduced to writing?

Catherine Magone

A. It could vary day to day. It could be four one day eight the next.

Q. What about with Ms. Newmark?

A. Same.

Q. And that was the limit; eight was the most?

A. We don't have a number on the limit. But I would say that their caseload was probably an average of six to eight.

Q. Were there any statistics ever kept in reference to the caseload or maintained by your office?

A. No.

Q. Did anyone ever seek to compile statistics in reference to the number of cases each social worker was assigned?

A. I would know that on a daily basis pretty much because I was -- I would ask the question.

Q. Did anyone seek to compile information concerning the number of cases or patients each social worker was assigned each day?

A. No, no.

Catherine Magone

Q. Are there any records to your knowledge regarding that?

A. No.

Q. Apart from what you've already testified to, what, if anything else, do you recall communicating with Ms. Newmark about assigning Nicole Serra to the palliative care services?

A. Nothing.

Q. Apart from what you've already testified to, what, if anything, do you recall Ms. Newmark stating in words or substance with respect to your decision?

A. Nothing else.

Q. Did there come a time that anyone communicated with you concerning your decision to appoint Nicole Serra to the palliative care services?

A. I don't understand the question.

Q. Did anyone ever communicate with you that Ms. Newmark had gone to them about your decision?

A. To human resources, yes.

Q. Apart from human resources did

Catherine Magone

anyone else ever communicate with you that
Ms. Newmark had expressed concern about that?

A. No.

Q. I'm going to show you again what's
marked as Plaintiff's Exhibit 2 for
identification. You have it underneath some of
those documents.

When did human resources first
communicate with you concerning Ms. Newmark
expressing her concern about your decision?

A. I don't know the exact date.

Q. Can you approximate how many days?

A. It was a few days after our
discussion.

Q. Who communicated with you?

A. Pat Orsaia.

Q. Was this verbally, in writing or
some other manner?

A. I believe E-mail.

Q. What was the substance of the
E-mail?

A. I believe that Pat was going on
vacation and she just E-mailed me that Carole
Newmark had come to her with some concerns and

Catherine Magone

that she would be in touch with me when she returned.

Q. What was stated in the E-mail?

A. Something to that effect.

MS. NICAJ: Four.

(Plaintiff's Exhibit 4

8/22/06 E-Mail marked for identification, as of this date.)

Q. I'm going to direct your attention to what is marked as Plaintiff's Exhibit 4 for identification. Do you see that?

A. Yes.

Q. It appears to be an E-mail from you to Pat Orsaia and the subject is accept that Carole Newmark's concerns. Do you know what her E-mail to you was?

MR. KEIL: I object as to form. Do you understand the question?

THE WITNESS: No.

Q. You said she E-mailed you. What was the substance of her E-mail to you?

A. Well, this is back in -- this is August.

Q. Right.

Catherine Magone

A. This is July. It's a month later.
But it wouldn't be related.

Q. What is July? What is July? Both
of them are August.

A. Oh, August. I'm sorry, I'm sorry.
I'm sorry. I'm sorry.

Q. It's okay.
What were you referring to as July, by
the way?

A. I was just thinking it was July.
You know. It wasn't July. It's August.

Q. What E-mail did Ms. Orsaia send to
you?

A. This E-mail was probably when she
came back setting up a meeting with Carole and
I.

Q. I'm not asking about probably. I'm
asking -- you indicated that Ms. Orsaia first
sent you an E-mail and you read it and related
it to Ms. Newmark's concerns.

A. At that time she didn't elaborate.

Q. Do you know where that E-mail is,
because we don't have it.

A. Maybe it wasn't an E-mail then.

Catherine Magone

Q. Prior to any meeting with Ms. Newmark, do you know what those concerns Ms. Newmark had expressed to Patricia Orsaia were?

A. Yes.

Q. What?

A. That she felt that the conversation that I had had with her when I told her that I was appointing Nicole Serra to the program, palliative care program, that in using the word "young" that implied ageism.

Q. Well, she doesn't exactly say you just used the word "young," did she, to your knowledge?

A. Using the word "young" implied ageism is what she said.

Q. Did she identify what comment she exactly attributed to you in connection with using the word "young" to your knowledge?

A. Yes.

Q. What?

A. She said that I said, which I deny, that Nicole was younger therefore could do a better job.

1 *Catherine Magone*

2 Q. When did you learn that she had
3 communicated this concern to Pat Orsaia?

4 A. I don't recall.

5 Q. Was this around the time you
6 received the appointment for August, accepted
7 Carole Newmark's concerns?

8 A. Pardon me?

9 Q. Verbal response, she said.

10 A. I don't know the exact date.

11 Q. Do you recall communicating with
12 Ms. Orsaia prior or around August 21 about
13 Ms. Newmark's concerns about --

14 A. Yes.

15 Q. So if it wasn't August 21, it was
16 around that time, is that right?

17 A. Yes.

18 Q. When was the next communication
19 that you had with anyone concerning Ms. Newmark
20 after your August 21, 2006 E-mail?

21 A. I don't recall exact dates.

22 Q. With whom?

23 A. Pat Orsaia.

24 Q. Was this at a meeting with
25 Ms. Orsaia?

Catherine Magone

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2

A. Yes.

3

Q. Was anyone else present?

4

A. No.

5

Q. Did Ms. Orsaia take notes?

6

A. I don't recall.

7

Q. Did she have you write a statement

8

as to what you actually told Ms. Newmark?

9

A. No.

10

Q. How did you come to meet with

11

Ms. Orsaia?

12

A. She asked to meet with me.

13

Q. Do you know how long after the

14

August 21, 2006 E-mail?

15

A. I don't recall.

16

Q. What did she say?

17

A. I just told you.

18

Q. She asked to meet with you?

19

A. She asked to meet with me to

20

discuss Carole's concerns.

21

Q. When she asked you to meet with her

22

to discuss Carole's concerns, did she identify

23

what those concerns were?

24

A. I don't recall.

25

Q. Did you meet -- then meet with her?

Catherine Magone

A. Yes.

Q. Apart from what you've already testified to, did you say anything else to her or did she say anything else to you?

A. No.

Q. How long after your telephone conversation with her did you meet with Ms. Orsaia?

A. I don't recall.

Q. Was it the same day, the next day, sometime after?

A. Probably sometime after.

Q. Who spoke first at this meeting?

A. At the meeting that Pat Orsaia and myself were at?

Q. That's correct.

A. I don't recall who spoke first.

Q. What do you recall her saying in words or substance?

A. That Carole had come to meet with her, that she -- and that she had indicated -- carole had indicated that I had said that I was giving the position to Nicole because she was younger and better able to do the job and that

Catherine Magone

this was constituting ageism.

Q. What, if anything, did you say in response?

A. I totally denied that. I in no way implied or inferred that age had anything to do with my decision.

Q. Did you reduce that to writing at that time to Ms. Orsaia?

A. No, I did not.

Q. Did Ms. Orsaia take any notes of your meeting with her?

A. I don't recall.

Q. Did she record the conversation?

A. No.

Q. Was anyone else present?

A. No.

Q. What else was said by you or her at this meeting?

A. She told me that she had expressed to Carole that she had worked with me for the past -- for four years and that no -- at no time during that period had age ever been an issue. She also told Carole -- she also told me that she told Carole that I hired her knowing her age

Catherine Magone

and I'm close to her age myself.

Q. Who is close to Carole's age?

A. (Indicating).

Q. How old are you?

A. I'm going to be 55.

Q. Do you know how old Ms. Newmark is?

A. I think she's 62. I also have many staff in the department that are over 55 and 60.

Q. Did Ms. Orsaia take any notes as far as you can tell of what you told her?

A. I don't recall.

Q. Did you request that she document your response in writing?

A. No.

Q. Did she ever ask you to reduce what you in fact told Ms. Newmark in writing?

A. Yes.

Q. When?

A. After our meeting with Carole.

Q. So you actually met with Ms. Newmark. How long did your meeting with Pat Orsaia last, the one in which you and she were by yourselves?

A. 40 minutes.

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Catherine Magone

A. Yeah, I gave everything to them.

Q. So is it fair to say if there is nothing documented concerning Ms. Newmark's absences prior to her expressing her concern to Pat Orsaia about your comments or comments she attributed you making, that there aren't any?

A. I don't recall if what is documented in her file was prior to or after. I just can't recall when it was. But I do have documentation in her file regarding a discussion about issues with time off.

Q. Was that after she had complained about you?

A. I don't recall.

Q. You indicated you met with Pat Orsaia about Ms. Newmark's unscheduled time off. When you say unscheduled time off, what do you mean by that?

A. Calling in sick.

Q. Do you know whether those -- the calling in sick were legitimate?

A. Legitimate?

Q. Yes.

A. She was sick.

1 *Catherine Magone*

2 Q. Did you have any doubt that she was
3 sick?

4 A. We don't ask. It's a policy,
5 unscheduled time off. The policy is that you
6 don't -- my concern was that she was only there
7 a short period of time, and she had already had
8 three unscheduled times off. And one day she
9 left after an hour and a half, went home sick,
10 and then she was requesting an additional day
11 off to have a procedure.

12 Q. And did she document that procedure
13 that she was having? Did she submit a doctor's
14 note?

15 A. She did.

16 Q. Now, are there any rules and
17 regulations with respect to unscheduled time
18 off?

19 A. The rule is that if anything over
20 five unscheduled time off in a year is
21 considered excessive.

22 Q. Is there a certain amount of
23 discretion that is allotted to managers in
24 determining the scheduled be -- the unscheduled
25 time off?

Catherine Magone

that E-mail to Pat Orsaia?

A. Yes.

Q. So you saw Ms. Newmark's September 29 E-mail to Pat Orsaia, is that right?

A. Yes, yes.

Q. And you were responding to that?

A. Yes.

Q. Now, I'm going to direct your attention to -- you indicated that you had discussed with Pat Orsaia some issues concerning Ms. Newmark, is that right?

A. Yes.

Q. Now, you also at one point met with Ms. Newmark, is that right, and Pat Orsaia --

A. Yes.

Q. -- concerning Ms. Newmark's concern with respect to Nicole Serra and the comments she attributed you making?

A. Yes.

Q. And that occurred on September 28, 2006, is that right?

A. Yes.

Q. Where did you, Ms. Newmark and Ms. Orsaia meet?

Catherine Magone

A. Her office, Pat Orsaia's office.

Q. Was this a prearranged meeting?

A. Yes.

Q. Did you get to the meeting before
Ms. Newmark?

A. I don't recall.

Q. Do you recall who spoke first
during the meeting?

A. I don't recall.

Q. What in words or substance did
Ms. Newmark say at this meeting?

A. Well, she reiterated the issue of
ageism, and I attempted to clarify what it was
what I meant when I used the word "young."

Q. I'm going to direct your attention
to paragraph No. 3 of Ms. Newmark's E-mail to
Pat Orsaia which you received and you responded
to. No. 3 reads, "When we went over the issue
of ageism, Cathie denied that she said 'Nicole
was younger and could handle the job better than
I could.' She stated that she did say that
Nicole was young and could take things in like a
sponge." Did you say that at the meeting with
Pat Orsaia and Ms. Newmark?

1 *Catherine Magone*

2 A. Not that exact word.

3 Q. What did you say about Ms. Serra
4 being young and taking things up like a sponge?

5 A. I said that she was young in her
6 career and that she took things in like a
7 sponge. I did say that.

8 Q. Did you ever deny in your other --
9 in your correspondence to Ms. Newmark that what
10 you said about Nicole being young and could take
11 things up like a sponge being stated at the
12 meeting with Ms. Orsaia?

13 A. Did I ever deny it?

14 Q. Yes.

15 A. That she could take things in like
16 a sponge in --

17 Q. No. At the meeting with
18 Ms. Orsaia, she, Ms. Newmark, attributed that
19 you said at that meeting that Nicole Serra was
20 young and could take things up -- could take
21 things in like a sponge, close quote. Do you
22 see that?

23 A. Yes.

24 Q. Did you -- and you were responding
25 to her E-mail, is that right, Ms. Newmark's

1 *Catherine Magone*

2 E-mail to Pat Orsaia?

3 A. Yes.

4 Q. Did you ever deny saying -- stating
5 that quote at the meeting with Ms. Orsaia?

6 A. Yes.

7 Q. You denied it?

8 A. Yes.

9 Q. Where is that contained?

10 MR. KEIL: Just to clarify,
11 you are referring to Plaintiff's Exhibit
12 5?

13 Q. Five with respect to Ms. Newmark's
14 E-mail and then her response in Plaintiff's
15 Exhibit 6.

16 A. I don't understand your question.
17 This is Carole's recollection of that meeting,
18 not mine.

19 Q. Did you ever deny stating in your
20 subsequent E-mail in response that you told her
21 in the meeting with Pat Orsaia that Nicole was
22 young and could take things in like a sponge?

23 A. No.

24 Q. I'm going to direct your attention
25 to No. 1 of Plaintiff's Exhibit 5, the paragraph

Catherine Magone

that is numbered No. 1. It states, "I would like to know how long my probation has been extended. This should not be held from me until I receive my performance evaluation." Did the fact that her probation was extended, was that communicated to her on September 28?

A. I believe it was before that.

Q. Did you ever put that in writing to her?

A. No.

Q. Did you ever advise the human resources in writing that you were extending Ms. Newmark's probation?

A. No.

Q. How long was her probationary period?

A. Six months.

Q. And when was it due to expire?

A. The end of September.

Q. Was it, in fact, September 20 that it had expired?

A. Yes.

Q. So at the meeting on September 28 there was a discussion on the probationary

1 *Catherine Magone*

2 period being extended, is that right?

3 A. Yes.

4 Q. Along with the meeting, along with
5 it, Ms. Newmark also expressed her concern about
6 ageism, is that right?

7 A. Yes.

8 (Off the record discussion.)

9 MS. NICAJ: Plaintiff's
10 Exhibit 7.

11 (Plaintiff's Exhibit 7
12 10/5/06 Memo marked for identification, as
13 of this date.)

14 Q. I'm going to direct your attention
15 to Plaintiff's Exhibit 7 for identification. Do
16 you recognize that document?

17 A. I do.

18 Q. What do you recognize it to be?

19 A. An E-mail that I sent to Pat
20 Orsaia.

21 Q. What is that in reference to?

22 A. It's in reference to Exhibit 6.

23 Q. What did you mean, "I just wanted
24 you to know that Carole picked up her E-mail at
25 5:30 last night"? How did you know that?

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Catherine Magone

A. How did I know she picked up her E-mail at 5:30?

Q. Yes.

A. Because I can tell on my E-mail.

Q. Did you request a receipt, is that what you did?

A. I get receipts on everybody.

Q. Do you default to get a receipt?

A. Yes.

Q. "Has not responded to me or spoken to me about it." What were you referring to, about what, your E-mail?

A. About my E-mail.

Q. Did you know what her schedule was between 5:30 on October 4 through 10:50, October 5?

A. No.

Q. Did you know whether she had, in fact, an opportunity to respond to your E-mail?

A. No.

Q. Ms. Newmark was fired on October 5, wasn't she?

A. Yes, she was.

Q. When was that -- you were present

Catherine Magone

Ms. Orsaia your intent to terminate
Ms. Newmark's employment?

A. I don't recall.

Q. It was after that meeting on
September 28, 2006?

A. We had been talking about it prior
to that.

Q. When did you first talk about it?

A. Well, I had concerns for some time
about Carole's performance.

Q. When did you first start talking to
Pat Orsaia about possibly terminating
Ms. Newmark's employment?

A. After that meeting.

Q. After the September 28 meeting?

A. No. Actually, I believe it was
before that.

Q. When?

A. I don't recall the exact date. It
was that week.

Q. That week prior to the meeting?

A. Yes.

Q. You already learned that she had --
you already learned at that point that she had

Catherine Magone

expressed -- Ms. Newmark had expressed concern about possible ageism on your part, is that right?

A. Yes.

Q. When did you first document your intent to explore terminating Ms. Newmark's employment?

A. I have no documentation of that.

Q. When did you, in fact, decide to terminate her employment?

A. I don't recall the exact date.

Q. Was this before or after that meeting with Ms. Newmark and Ms. Orsaia?

A. The September 28 --

Q. Yes.

A. -- meeting? There was some discussion before that.

Q. I understand there was discussion. When did you, in fact, decide that she was going to be terminated?

A. It would have been after that meeting.

Q. What happened from the point of that meeting to the point of Ms. Newmark's

Catherine Magone

termination that prompted you to decide to, in fact, terminate her employment?

A. Well, there actually had been a number of things that I was concerned over several months -- let me finish. Let me finish.

Q. You can. Go ahead.

A. A number of things that had concerned me for months prior to this event that I have documented. But I think that the thing that really drove it was Carole's inability to accept a management decision and letting go of her anger. It affected how she was performing her duties.

Q. What happened between September 28 meeting and when you, in fact, decided to terminate her that made you decide?

A. Because I decided that during her probationary period she didn't pass her probationary period.

Q. Nothing happened from the period of the September 28 meeting, in which you advised her that her probation was being extended, to October 5 when her termination was communicated to her, is that right?

Catherine Magone

Q. From September 28 which was a Thursday if I'm not mistaken, take a look at Plaintiff's Exhibit 5 for identification, because it says from, and the date is Friday, September 29. The meeting was on the 28th, so I'm assuming it was a Thursday, is that a fair assumption?

A. Yes.

Q. From Thursday, September 28, through Wednesday -- Thursday, October 5, what, if any, incidents do you recall relating to Ms. Newmark that made you decide to, in fact, terminate her employment?

A. I don't recall.

Q. We are going to go into the instances of her performance shortly. When did you first have any issues concerning Ms. Newmark's performance?

A. July.

Q. July. And did you document that?

A. Yes.

Q. Did you ever notify her?

A. Yes.

Q. Did you put your notice in writing